No. 24. October Term, 1915

IN THE

Supreme Court of the United States.

LATTA & TERRY CONSTRUCTION COMPANY,
Appellant,

v.

THE BRITISH STEAMSHIP "FAITHMOOR", William Evens, Master and Claimant.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania, in Admiralty.

BRIEF OF APPELLANT.

H. ALAN DAWSON,
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STATEMENT OF THE CASE.

I.

This is an appeal from the District Court on the question of jurisdiction which is certified. The case arises out of the collision, on July 18th, 1909, of the British Steamship "Raithmoor" with, inter alia, an unfinished ship channel beacon light structure which Appellant was erecting for the United States Government in the navigable waters of the Delaware River.

The character, location, purposes, ownership, manner of erection and condition of this unfinished beacon light structure are fully stated in the Certificate of the learned District Judge (Rec. pp. 16, 17), and also in the Libel (Rec. p. 4) and in the opinion of the District Court (Rec. pp. 11, 12, 13). When finished it was to consist of three cylindrical piles of reinforced concrete encased in steel, to be sunk about 19½ feet into the bed of the River and to project 12 feet above mean high

water, and to be protected by depositing rip-rap around them to a specified height, said piles to be covered with a sheet steel cap on which was to be placed a lamp and its appliances. The site was in navigable waters at the turn in the channel where the Newcastle Range intersects the Deep Water Point Range, a short distance below the town of Newcastle, Delaware, about three-quarters of a mile from the eastern or New Jersey shore, about two miles from the western or Delaware shore, about three hundred feet to the eastward of Gas Buoy No. 26 which marked the turn in the channel, and surrounded on all sides by navigable water about 27 feet deep at low tide, there being that depth of water at the base of the piles themselves. The Government was engaged in widening the channel at the turn from a width of 600 feet to a width of 1200 feet which widening required no dredging or work on the eastern side other than the erection of the beacon light in question, which, when finished, was to be maintained and used by the Government as a Government ship channel beacon light to mark the turn in the widened ship channel and solely as an aid to navigation. Appellant, a corporation in the business of erecting and doing work upon beacon lights, was engaged under contract with the Government in constructing and erecting for the Government the entire beacon light structure above described, with the exception of the lamp and its appliances to be put in place on the metal cap by the Government. The Government itself furnished no part of the labor, materials or appliances, excepting the lamp which was used temporarily to light the unfinished structure, but the erection was at all times under the direction and continual supervision and control of the Government, no part of the work being done except in the presence and under the direction of the Government's engineers. At the time of the collision Appellant's work was not finished nor accepted by the Government, although it

was approaching completion, the piles being in place, the metal cap there, and not much remaining to be done except to put the cap in place and deposit the rip-rap whereupon the Government had only to install its lamp and appliances on the cap. The necessities of Appellant's work required the use of a temporary platform of wood about 15 feet square built close to the piles and resting upon wooden piling driven into the bottom of the River. Appellant's pile driver and barge were also necessary to the work, and at the time of the collision were anchored a few feet to the south of the piles.

On the evening of Sunday, July 18, 1909, the British Steamship "Raithmoor" loaded with cargo and drawing about 22½ feet, coming up the Delaware River under her own motive power, inbound for Philadelphia from a foreign port in Sweden, collided with Appellant's said pile driver, barge, unfinished beacon light structure, and temporary platform, seriously damaging the pile driver, partially sinking the barge, wrecking the temporary platform, and completely demolishing the unfinished beacon light structure, the piles thereof being torn loose and so scattered under the waters of the River that they were irretrievably lost.

Appellant filed a Libel *in rem* in the admiralty against the Steamship in the United States District Court for the Eastern District of Pennsylvania to recover the damage aforesaid resulting from the tort of the Steamship in the collision. The Court found that the collision was caused solely by the negligent management of the Steamship (Rec. pp. 13, 14, 15), entered a Decree for the damages to Appellant's pile driver and barge and cargo, but dismissed the Libel for want of jurisdiction as to the damage to Appellant's unfinished beacon and temporary platform (Rec. pp. 15, 16). Appeal from the Decree dismissing the portion of the Libel as aforesaid was taken directly to this Court under the provisions of the Act of Congress of March

3, 1891, Chapter 517, the only question involved being one of jurisdiction as certified by the learned Judge of the District Court (Rec. pp. 16, 17).

Questions Involved.

1. Whether the alleged injury to the unfinished beacon light structure was a maritime tort and within the jurisdiction of a Court of Admiralty.

2. Whether the alleged injury to the temporary platform was a maritime tort and within the jurisdiction of a Court of Admiralty.

3. Whether a Court of Admiralty, having rightfully taken jurisdiction *in rem* of the damage caused by the maritime tort of the Steamship to Appellant's pile driver and barge, should retain jurisdiction to redress as well the additional incidents of the same tort consisting of the damage to Appellant's unfinished beacon and temporary platform.

II.

SPECIFICATION OF ERRORS RELIED UPON.

Appellant relies upon its Assignment of Errors (Rec. pp. 21, 22) to the effect that the final decree of the District Court (Rec. pp. 15, 16) is erroneous in that it dismisses the libel for want of jurisdiction as to the damages for injuries to Appellant's unfinished beacon and temporary platform sustained in the collision, as alleged in the libel (Rec. pp. 3-7); and fails to decree that Appellant have and recover said damages from the Steamship, its claimant and surety. Appellant further relies upon its said Assignment of Errors to the effect that the District Court finds in its Opinion filed and

made part of the record (Rec. pp. 11-15, 17) that the District Court, sitting in Admiralty, was without jurisdiction to redress by an award of damages or otherwise the injuries to Appellant's said unfinished beacon and temporary platform, under the facts of the case; and fails to find that the Court had jurisdiction thereof.

III.

ARGUMENT.

In our discussion we shall treat the temporary platform as part of the unfinished beacon, for it seems clear that the platform stands or falls with the beacon.

The structure which here concerns us was situated in navigable water where it was at least 27 feet deep, three-quarters of a mile from the nearest shore, two miles from the other shore of the River, and surrounded on all sides by navigable water. It was lawfully at said place by authority of the Government. It was being constructed upon Government plans, under Government direction, supervision and control, for the Government, and, when completed, to be owned and used by the Government solely as a ship channel beacon in aid of navigation. It had no connection with the shore, did not concern commerce upon land nor pertain to the land in any manner, but was solely maritime in character having no other purpose or function present or prospective. It was destroyed as was the beacon in the *"Blackheath"*, 195 U. S. 361, "by the motion of the vessel, by a continuous act beginning and consummated on navigable water". The vessel was at all times during the tort afloat in navigable water.

The test of admiralty jurisdiction in tort is locality. Was the tort here alleged consummated on land or water as those words are understood in admiralty?

1. *Basis of the District Court's Decision.*

The learned District Judge in his opinion (Rec. pp. 12, 13), and in his Certificate (Rec. p. 17), denied jurisdiction upon the grounds that as the unfinished beacon was not fully completed, nor accepted by the Government, nor put into use as a Government beacon light or as an aid to navigation, it had not yet taken on maritime character, but was still a mere collection of materials partly put into place, but not yet devoted to the maritime purpose for which it was ultimately intended. The Court held accordingly that the *Blackheath*, supra p. 5, did not apply and that the pending question is new and has not yet been decided by this Court. The controlling reason for the District Court's conclusion seems to have been found in the analogy of an uncompleted ship, the Court saying in its opinion (Rec. p. 13):

> "The analogy of a ship seems to be instructive. Indeed, if it is applicable at all, it is controlling. There can be no doubt for what purpose a ship is intended, but while it is being built, even altho it may be afloat, admiralty declines to take jurisdiction; after it has been finished and begins to carry on a maritime business, the jurisdiction attaches without delay. This point has been often decided: Ferry Co. v. Beers, 20 Howard 393; Edwards v. Elliott, 21 Wall. 553, and many cases cited in note 37 upon page 828 of 1 Cyc."

We respectfully submit that the Court below was misled to an erroneous conclusion through (1) drawing the above faulty analogy from decisions upon *contracts* for building vessels, and (2) misinterpreting the general principle of admiralty law upon which the decision in the *"Blackheath"* is based.

2. *The analogy to an unfinished ship supports the jurisdiction in the case at Bar.*

Ferry Company v. Beers, 20 How. (61 U. S.) 393, *Edwards v. Elliott,* 21 Wall. 532, 553, and other similar decisions cited or referred to by the learned District

Judge, are all cases of *contract* for the original construction of vessels, or for materials or supplies furnished or work done in and about such original construction. In matters of contract the jurisdiction of courts of admiralty depends upon the nature and character of the contract, and in a long line of decisions from *Ferry Company v. Beers,* supra, down to the recent case of *Graham v. Morton Transportation Company* in 203 U. S. 577, this Court has held that contracts for the original construction of a vessel, and for all work, materials and labor connected therewith, are not maritime, but are contracts made on land to be performed on land, and therefore not cognizable in a Court of Admiralty. Everything done in and about the original construction, whether before or after the vessel is launched, relates back to the original contract which is non-maritime. It is purely a matter of contract, and in construing the contractual rights and obligations of the parties the Courts properly look solely to the nature and character of the contract, and not to the intended use to be made of the vessel under construction. But these cases of *contract* have no relevancy by way of analogy or otherwise to the consideration of a maritime *tort* where the test of jurisdiction is the locality of the injured thing at the time the tort was committed. This distinction was succinctly stated by this Court in *Phila. W. & B. R. R. v. Towboat Co.,* 23 How. 209, at page 215:

> "The jurisdiction of Courts of Admiralty in matters of contract depends upon the nature and character of the contract; but in torts it depends entirely on locality."

This language is cited and quoted with approval by this Court in the recent case of *Atlantic Transport Company v. Imbrovek,* 234 U. S. 52, 59, and is in harmony with all the pronouncements of this Court

from the *"Plymouth"*, 3 Wall. 20, to date, the only qualification thereof which appears in any of the cases being the use at times of the expression *"character and locality* of the injured thing" in *Martin v. West*, 222 U. S. 191, and certain other decisions.

Although it is therefore immaterial in a matter of contract concerning the construction of a vessel whether the locality of the unfinished vessel is on land or in navigable waters, this question does become of vital importance in considering matters of tort affecting an uncompleted ship. The broad statement made by the learned District Judge in his opinion (Rec. p. 13) that "while it (ship) is being built, even altho it may be afloat, admiralty declines to take jurisdiction", is clearly erroneous when applied to questions of tort, and therefore his analogy of an unfinished beacon to an unfinished ship, upon which his opinion seems to be largely predicated, does not support his conclusion that a Court of Admiralty is without jurisdiction in the case at Bar. On the contrary, the analogy strongly supports the jurisdiction. A ship becomes such when she is launched, notwithstanding she is still unfinished, and from the moment she takes the water she becomes the subject of admiralty jurisdiction. This Court has thus stated the law in so many words in the comparatively recent case of *Tucker v. Alexandroff*, 183 U. S. 424, where the question was squarely raised. That case is also authority for the further proposition that, after launching, an unfinished vessel takes on the character which it is intended to have when completed. The decision seems to us so conclusive of the case at Bar that we shall take the liberty of citing it at some length.

Alexandroff, a conscript in the Russian naval service, was sent as one of a detail of fifty-three men to Philadelphia, to become a part of the crew of a Russian cruiser then under construction at that port. On

his arrival at Philadelphia, the vessel was still upon the stocks, but was shortly thereafter launched, and continued for some months in the water still under construction. Alexandroff, who had remained during the winter at Philadelphia in the service and under the pay of the Russian Government, but was never aboard the ship, deserted the following Spring after the ship was launched but before she was completed, went to New York, renounced his allegiance to the Emperor, declared his intention of becoming a citizen of the United States, and obtained employment. Shortly thereafter, he was arrested as a deserter from a Russian ship of war, and committed to prison, subject to the orders of the Russian Vice Consul or commander of the cruiser. On a writ of *habeas corpus* this Court held, inter alia (p. 425):

> "(1) That although the cruiser was not a ship when Alexandroff arrived at Philadelphia, she became such upon being launched;
>
> "(2) That, under the treaty with Russia of 1832, in virtue of which these proceedings were taken, she was a ship of war as distinguished from a merchant vessel, notwithstanding she had not received her equipment or armament, and was still unfinished.
>
> . . . . . .
>
> "A ship becomes such when she is launched, and continues to be such so long as her identity is preserved: From the moment she takes the water she becomes the subject of admiralty jurisdiction."

In the opinion, delivered through Mr. Justice Brown, this Court said (pp. 437-439):

> "What then are the stipulations to which we must look for the solution of the question involved in this case? They are found in the ninth article of the treaty, which authorizes the arrest and sur-

render of '*deserters from the ships of war and merchant vessels of their country.*' It is insisted, however, that this article is no proper foundation for the arrest of Alexandroff for three reasons: First, that the Variag was not a Russian ship of war; second, that Alexandroff was not a deserter from such ship; and, third, that his membership of such crew was not proven by the exhibition of registers of vessels, the rolls of the crew, or by other official documents. The case depends upon the answers to these questions.

"1. At the time Alexandroff arrived in Philadelphia, the Variag was still upon the stocks. Whatever be the proper construction of the word under the treaty, she was not then a *ship* in the ordinary sense of the term, but shortly thereafter and long before Alexandroff deserted, she was launched, and thereby became a ship in its legal sense. A ship is born when she is launched, and lives so long as her identity is preserved. Prior to her launching she is a mere congeries of wood and iron—an ordinary piece of personal property—as distinctly a land structure as a house, and subject only to mechanics' liens created by state law and enforcible in the state courts. In the baptism of launching she receives her name and from the moment her keel touches the water she is transformed, and becomes a subject of admiralty jurisdiction. She acquires a personality of her own; becomes competent to contract, and is individually liable for her obligations, upon which she may sue in the name of her owner, and be sued in her own name. Her owner's agents may not be her agents, and her agents may not be her owner's agents. *The China*, 7 Wall. 53; *Thorp v. Hammond*, 12 Wall. 408; *Workman v. New York City*, 179 U. S. 552; *The Little Charles*, 1 Brock. 347, 354; *The John G. Stevens*, 170 U. S. 113, 120; *Homer Ramsdell Co. v. Comp. Gen. Trans.*, 182 U. S. 406. She is capable, too, of committing a tort, and is responsible in damages therefor. She may also become a quasi bankrupt; may be sold for the payment of her debts, and thereby receive

a complete discharge from all prior liens, with liberty to begin a new life, contract further obligations, and perhaps be subjected to a second sale. We have had frequent occasion to notice the distinction between a vessel before and after she is launched. In *The Jefferson, People's Ferry Company v. Beers,* 20 How. 393, it was held that the admiralty jurisdiction did not extend to cases where a lien was claimed for work done and materials used in the construction of a vessel; while the cases holding that for repairs or alterations, supplies or materials, furnished after she is launched, suit may be brought in a court of admiralty, are too numerous for citation.

"So sharply is the line drawn between a vessel upon the stocks and a vessel in the water, that the former can never be made liable in admiralty, either *in rem* against herself or *in personam* against her owners, upon contracts or for torts, while if, in taking the water during the process of launching, she escapes from the control of those about her, shoots across the stream and injures another vessel, she is liable to a suit *in rem* for damages. *The Blenheim,* 2 W. Rob. 421; *The Vianna,* Swab, 405; *The Andalusian,* 2 P. D. 231; The *Glengarry,* 2 P. D. 235; *The George Roper,* 8 P. D. 119; *Baker v. Power,* 14 Fed. Rep. 483.

"Inasmuch as the Variag had been launched and was lying in the stream at the time of Alexandroff's desertion, we think she was a ship within the meaning of the treaty."

. . . . . .

(p. 445)

"We express no opinion as to whether, if the Variag had not been launched when he deserted, he could be held as a member of her crew, but when she took the water and became a ship she was competent to receive a crew, and a detail to her service took effect."

. . . . . .

(p. 446)

> "Being, as we have already held, *a ship,* she must be either a ship of war or merchant vessel, and as she was clearly not a merchant vessel, the only other alternative applies."

The dissenting opinion did not question this conclusion, Mr. Justice Gray saying in the course of the minority opinion (p. 463):

> "The Variag, at the time of Alexandroff's desertion, was indeed, in one sense, a ship, because she had been launched and was waterborne."

The five English cases cited in the quotation from page 439 of the opinion, supra, were all actions in which the Courts of Admiralty took jurisdiction of Libels *in rem* against unfinished vessels for maritime torts inflicted in their launching upon other vessels in navigable waters.

If an unfinished vessel thus takes on maritime character and becomes the subject of maritime jurisdition when launched so as to be liable in an action *in rem* in the admiralty for her tortious acts, it follows that a court of admiralty has jurisdiction to redress an injury to her inflicted by the tort of another vessel upon her while she is in navigable waters. Under the principle of *Tucker v. Alexandroff*, a Court of Admiralty would clearly have jurisdiction of a Libel sounding in tort by the builders and owners of an unfinished vessel to recover for injuries inflicted upon her while she was lying at anchor in midstream completing her construction and was there collided with through the negligent navigation of another vessel. For the same reasons, we submit, a Court of Admiralty has jurisdiction upon the facts of the case at bar, and under the authority of *The Blackheath*, supra, p. 5, to redress in an action in tort the injury done by the ship to appellant's unfinished but almost entirely completed

beacon which had its *situs* lawfully in navigable water three-quarters of a mile from the nearest shore. The unfinished beacon was in no sense a "mere collection of compounds or materials partly put into place", any more than an unfinished vessel, after being launched, is a mere collection of materials partly put in place. The unfinished beacon had sufficiently taken on its character to be identified for what it was, to the same extent that the unfinished ship in *Tucker v. Alexandroff* had been so far completed when launched as to be identified as a cruiser or ship of war as distinguished from a merchant vessel "notwithstanding she had not received her equipment or armament and was still unfinished". A light could have been put on the unfinished beacon structure by either placing it on the piling or on the cap which was ready to be put into place, quite as readily as the unfinished cruiser in *Tucker v. Alexandroff* could have received a crew. Indeed, the unfinished beacon structure emerging at least 12 feet above mean high water, was already an aid to navigation in the daytime, and at night its temporary light supplied by the Government, indicated, to pilots familiar with the situation, the eastern edge of the widened channel at the turn in the River. Both the unfinished beacon and the unfinished ship had embraced their natural element, navigable waters and each was in a *locality* which was within the admiralty jurisdiction and where, when finished, each was to be used in commerce and navigation or in aid of commerce and navigation. The materials which were already in place as part of the unfinished beacon and were destroyed by the tort of the "Raithmoor", were not, as suggested by the learned District Judge, (Rec. p. 13), being merely "transferred from one jurisdiction to another." They had long since ceased to have any connection with land or commerce on land and had been transferred to and had become a maritime struc-

ture lawfully located in navigable waters—a structure intended to be used, and almost ready for use, solely as a Government aid to navigation, and a structure as essentially maritime in character at the moment of collision as was the recently launched vessel in *Tucker v. Alexandroff* which this Court said was a ship of war notwithstanding she had not received her equipment or armament and was still unfinished. Indeed, every reason stated by the learned District Judge in support of his conclusion fails when tested by the analogy to an unfinished ship considered in the light of the principle announced by this Court in *Tucker v. Alexandroff*. As well might it be said that the unfinished ship there described was still so incomplete that the maritime character of a ship had not yet attached, or that the materials composing her could only gain the protection of the admiralty by being devoted to maritime purposes, or that the work of transferring these materials from one jurisdiction to another was still in progress but not yet finished, or that the ship might never be finished or devoted to maritime purposes for which it was ultimately intended. But all these reasons are authoritatively answered by this Court in that decision in such a manner as to leave no room for doubt that the underlying principles therein stated apply with equal force to an unfinished beacon in all matters arising out of tort.

3. *The case at Bar is ruled by The Blackheath, 193 U. S. 361, and the general principles therein announced and applied.*

In *The Blackheath* this Court held that admiralty has jurisdiction of a Libel *in rem* against a Steamship for the damage caused by its negligently running into a beacon in navigable water, although the beacon is attached to the bottom. The analogy between that case and the one at Bar, is striking, the only differ-

ence in facts being that in *The Blackheath* the beacon was a completed one owned by the Government and possibly, in use; whereas here the beacon was unfinished but in process of construction by the Appellant who was constructing it for the Government and under the continual direction, supervision and control of the Government. The conclusion of the learned District Judge that this difference in facts works such a distinction in principle that *The Blackheath* does not apply, is based, we submit, upon a misconception of the fundamental principal upon which *The Blackheath* is predicated. The Court below conceives that the *Blackheath* makes a special exception in favor of a Government owned beacon actually in use as a Government aid to navigation (Rec. p. 12). On the contrary, *The Blackheath* merely reannounces and applies the following broad principle of ancient origin which does not conflict in any manner with *The Plymouth*, 3 Wall. 20, or any authority binding upon this Court: *That attachment to the soil under navigable water is not a peremptory bar against the admiralty jurisdiction, and that accordingly admiralty has jurisdiction of an injury caused by a maritime tort to a structure whose locality and character are maritime, notwithstanding the structure may be permanently attached to the realty.* It is difficult to conceive of any structure or thing other than a beacon or buoy which will fit this description, and it was therefore but natural that this Court in applying the principle for the first time should, at the conclusion of its opinion on page 367, exercise special care to so limit its decision to the particular structure then under consideration that no unwarranted inference would be raised that the principle announced in the pioneer case of *The Plymouth* was intended to be overruled. But the prior reasoning in *The Blackheath* opinion in which *The Plymouth* was carefully distinguished is significant, and, we submit,

supports our construction of the *Blackheath* decision. The Court says (p. 365):

> "The precise scope of admiralty jurisdiction is not a matter of obvious principle or of very accurate history. As to principle, it is clear that if the beacon had been in fault and had hurt the ship a libel could have been maintained against a private owner, although not *in rem.*"

Then in citing with approval the reasoning in *The Arkansas,* 17 Fed. 383, 387, the Court continues (p. 365):

> "But, as has been suggested, there seems to be no reason why the fact that the injured property was afloat should have more weight in determining the jurisdiction than the fact that the cause of the injury was. *The Arkansas,* 17 Fed. Rep. 383, 387; *The F. & P. M. No. 2,* 33 Fed. Rep. 511, 515; *Hughes, Adm.* 183. And again it seems more arbitrary than rational to treat attachment to the soil as a peremptory bar outweighing the considerations that the injured thing was an instrument of navigation and no part of the shore, but surrounded on every side by water, a mere point projecting from the sea."

Referring to the facts in *The Plymouth* the opinion points out the vital distinction between the cases (p. 367):

> "In the case of *The Plymouth* there was nothing maritime in the nature of the tort for which the vessel was attached. The fact that the fire originated on a vessel gave no character to the result, and that circumstance is mentioned in the judgment of the court, and is contrasted with collision, although the consideration is not adhered to as the sole ground for the decree. . . . Moreover, the damage was done wholly upon the mainland."

And then proceeds to announce the principle which underlies *The Blackheath* (p. 367):

> "It never has been decided that every fixture in the midst of the sea was governed by the same rule. The contrary has been supposed in some American cases, *The Arkansas*, 17 Fed. Rep. 383, 387; *The F. & P. M. No. 2*, 33 Fed. Rep. 511, 515, and is indicated by the English books cited above."

The language which follows is that which the learned District Judge seems to have misunderstood, although it is in reality only a careful statement made in conclusion to avoid the effect of seeming to overrule *The Plymouth* (p. 367):

> "It is unnecessary to determine the relative weight of the different elements of distinction between *The Plymouth* and the case at bar. It is enough to say that we now are dealing with an injury to a government aid to navigation from ancient times subject to the admiralty, a beacon emerging from the water, injured by the motion of the vessel, by a continuous act beginning and consummated upon navigable water, and giving character to the effects upon a point which is only technically land, through a connection at the bottom of the sea. In such a case jurisdiction may be taken without transcending the limits of the Constitution or encountering *The Plymouth* or any other authority binding on this court."

But the views expressed in the previous quotations of the Court's reasoning—to wit, that it is more arbitrary than rational to treat attachment to the soil which is only technically land through a connection at the bottom of the sea, as a peremptory bar outweighing other considerations, and that it never has been decided that every fixture in the midst of the sea was governed by the rule of *"The Plymouth"*—indicate clearly that if the injured thing had not been owned by the Government or not yet in use as an aid to naviga-

tion, but was a mere lawful structure at the place and having no connection with the shore or with commerce on land, the injury to it by a tort would have been held to have been a maritime one and subject to admiralty jurisdiction.

That *The Blackheath* was in fact based upon the principle that we have endeavored to state, and not upon the fact of Government ownership or upon the fact that the beacon was, possibly, in use, is shown by the construction placed upon it in the later case of *Cleveland Terminal Railroad v. Cleveland Steamship Company,* 208 U. S. 316 (1908) which called for an interpretation of *The Blackheath.* This Court, speaking through the then Chief Justice, said respecting *The Blackheath* (p. 320):

> "The damage was to property located in navigable waters, solely an aid to navigation and maritime in nature, and having no other purpose or function."

And then proceeds to contrast this principle with that forming the basis of *The Plymouth, Ex Parte Phenix Insurance Company,* 118 U. S. 610, *Johnson v. Elevator Company,* 119 U. S. 388, and other similar cases of injuries to shore docks, bridges, and like structures having to do with commerce on land (p. 321):

> "But the bridges, shore docks, protection piling, piers, etc., pertained to the land. They were structures connected with the shore and immediately concerned commerce upon land. None of these structures were aids to navigation in the maritime sense, but extensions of the shore and aids to commerce on land as such."

The opinion, on page 386 of *The Arkansas,* 17 Fed. Rep. 383, supporting the first paragraph of the syllabus thereof, which is cited with approval by Mr. Justice Holmes in delivering this Court's opinion in *The Blackheath,* is as follows (p. 386):

"What, then, it may be asked, is the criterion of jurisdiction as to place or locality upon these great, everchanging navigable waters? When is the locality or place where a tort is committed within admiralty cognizance and when not? I do not myself feel called upon to answer this general question. Though highly desirable, it would no doubt be extremely difficult to lay down any general rule or criterion by which the jurisdiction could be tested in all cases. For the decision of the present case suffice it to say that there is a clear distinction running through the cases between torts arising from the collision of boats with structures placed in the navigable bed of the river, and torts resulting from collision of boats and vessels with structures on land, whether immediately along the shore or not. Torts of the former class are within the admiralty jurisdiction; torts of the latter class are of common-law cognizance. The solution of the question of jurisdiction does not depend, in my judgment, upon the fact of the structure being solid or floating, realty or personalty, firmly affixed to the bed of the river or otherwise. It is a question of place, and of the rightfulness of the structure. Is the structure in the navigable bed of the river, and is it there by lawful authority or not?"

The quotation cited in *The Blackheath* opinion (supra p. 16) from Hughes on Admiralty, page 183, is as follows:

"The principle that wharves, bridges and piers are part of the shore applies to those which are attached directly or immediately through others to the bank or shore line. But piles and structures attached to the bottom and surrounded by water are within navigable waters, and admiralty has jurisdiction of suits for injuries inflicted by them. On principle it ought also to have jurisdiction of suits for injuries received by them, as they can hardly be considered extensions of the shore."

But whether or not we are correct in our interpretation of the basis of *The Blackheath* decision, it clearly rules the case at Bar. There can be no difference in principle between a finished beacon owned and operated by the Government and Appellant's unfinished beacon, emerging from the water, almost entirely completed, and being constructed for the Government, under Government direction, supervision and control and solely for Government use as a ship channel beacon in aid of navigation. If we are told that the unfinished beacon was not a maritime structure, we are entitled to ask what it was. It surely was a structure of some kind. And as certainly it was not a land structure. It did not pertain to the land nor to commerce on land. The connection with the bottom of the River was immaterial. That it was uncompleted and not yet put into use could not have the effect of making it a land structure any more than the pier located in navigable water and intended to support a railroad bridge across a stream can be said to be a maritime structure until the bridge is completed and put into use in connection with commerce upon land. Suppose we were here dealing with an unfinished floating gas buoy in navigable water securely anchored at the position of Appellant's unfinished beacon by chains attached to piles driven into the bottom of the river upon which buoy the light had not yet been placed. If such an unfinished buoy light had been destroyed by a collision with a vessel due to the negligent navigation of the vessel, there can be no doubt that the damage inflicted would have been cognizable in admiralty. Does the fact that Appellant's structure was attached to the bottom by permanently located piles driven into the bottom of the river present such a distinction in principle from the hypothetical case of an unfinished buoy just cited as to deprive the admiralty court of the power to redress the injury to the unfinished beacon?

4. *Summary of other important decisions which recognize and apply the principle that the test of jurisdiction in tort is locality, and that attachment to or connection with the soil is immaterial.*

We are not obliged to rely upon *The Blackheath*. Our position is well supported by the principles underlying all the other authoritative decisions which we have been able to find in a most exhaustive research. The proposition for which we contend is in no sense an exception to the rule laid down in *The Plymouth*, to which most cases refer for ultimate authority, or in conflict with any well considered application of that general rule. "The test of jurisdiction in tort is locality of the injured thing." The locality must be entirely in navigable water and not on the land. The word *land* as used in the cases means *shore or mainland* or extensions thereof, and not soil or realty constituting the bed of navigable waters. The gangway belonging to a ship or the piping of a dredge are mere extensions of the ship or dredge even though at one end they may rest upon the shore. So wharves or similar structures are merely extensions of the land or shore notwithstanding they may extend into and occupy navigable waters. When therefore any part of the injured thing is along the shore or land or close thereto, the courts in determining the *locality* have been obliged to also consider the character of the thing —whether or not it was attached to or connected with the shore or mainland or immediately concerned commerce on the land. If it does, then the *locality* of the thing is held to be that of which it is a mere extension, or which it immediately concerns, and it is treated as a land structure which in fact it is. But where the *locality* of a thing is in navigable waters and it has no connection with the shore or mainland, and its character, use and purposes, whether present or prospective, do not and cannot concern commerce on land, it is

necessarily a maritime thing to redress a tortious injury to which Courts of Admiralty have jurisdiction. Indeed, in some cases, notably those concerning marine cables hereinafter cited, mere attachment to the shore is considered immaterial. Locality alone is the sole test unless the character of the object shows clearly that it is in fact land or a mere extension thereof and consequently to be treated as located on land. We shall have occasion to point out in certain of the decisions hereinafter cited (infra, p. 28), that where the character of an unfinished thing or structure has been material to the determination of its locality in connection with a jurisdictional question, the courts have necessarily looked to the intended character of the structure when completed.

Therefore in applying this rule of locality to a case of damages resulting from a collision of a ship with the thing or structure injured the Courts have uniformly held that the substance and consummation of the wrong is on land where the thing is actually or constructively a land structure, but is in navigable waters where the thing is there located and is not in fact a land structure. We confidently assert that no decision binding upon this Court supports the conclusion of the learned District Judge that because the beacon light structure under consideration was unfinished it was a land structure for an injury to which admiralty has no jurisdiction.

In *The Plymouth*, 3 Wall. 20 (1865) damages were sought against the ship because fire negligently communicated from her destroyed a warehouse on shore. This Court held that admiralty could not take jurisdiction, saying (page 33):

> "It will be observed, that the entire damage complained of by the libellants, . . . occurred, not on the water, but on the land. The origin of the wrong was on the water, but the sub-

> stance and consummation of the injury on land. It is admitted by all the authorities, that the jurisdiction of the admiralty over marine torts depends upon locality—the high seas, or other navigable waters within admiralty cognizance."

And on page 36 the Court says:

> "The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality—the high seas, or navigable waters where it occurred. Every species of tort, however occurring, and whether on board a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."

Summary of Decisions.

A. Courts of Admiralty have taken jurisdiction for damages to the following structures for the reason that they were located in navigable waters and did not concern commerce on land:

(1) A beacon: *The Blackheath*, 195 U. S. 361.

(2) Submarine cables resting on the bottom of navigable water, notwithstanding connection of the ends with the shore: *Postal Telegraph Cable Company v. Ross*, 221 Fed. Rep. 105 (1915—District Court, Eastern District of New York); *The William H. Bailey*, 100 Fed. Rep. 115 (1900—District Court, District of Connecticut—affirmed by C. C. A. in 111 Fed. 1006); *The Anita Berwind*, 107 Fed. Rep. 721 (1901—District Court, Eastern District of Pennsylvania. Opinion by McPherson, J., who wrote the opinion in the case at Bar); *The City of Richmond*, 43 Fed. 85 (1890—District Court, Southern District of New York—affirmed in 59 Fed. Rep. 365); *Stephens v. Western Union Telegraph Company*, 8 Ben. 502, Fed. Case No. 13371 (1876—District Court, Eastern District of New York).

The first mentioned case of *Postal Telegraph Cable Company v. Ross* was decided only a few months ago and reviews the later decisions of this Court. A dredge was held liable for negligently fouling with its anchor and breaking and dragging from its place a portion of a submarine cable which crossed a tide water navigable channel, rested on the bottom and was connected at each end with land wires on shore. The Court says (p. 107):

> "The result of the force exerted by the anchor (of the dredge) must have been to have raised the cable from the bed of the chanel, and to have dragged it along through the water. The accident, therefore, occurred within the physical limits of admiralty jurisdiction, it was occasioned by the operations of the anchor and the handling of the boat, and the cable itself is akin rather to matters connected with the ocean than to those of the land, although it was supported at each end upon the shore, and, for the purpose of transmitting an electric current, has no closer relation per se to navigation than would a wire crossing over a stream, in the air, and which was employed to transmit news as to ships, etc. The cable is further like a beacon or buoy, in that it is merely located at the spot, even though attached to the land at each end. . . .

(p. 108)

> " . . . But suppose an injury were caused to the Atlantic cables, on the high seas, by a steamer, could it be held that, because the cable had a landing on shore, it was a land fixture, and was not an object wholly within the maritime jurisdiction, where it lay supported by the bottom and not by its own buoyancy? If so, no damage by a boat to a sunken dry-dock or vessel could lie in the admiralty, if there were a shore mooring, and if it could not *at the time* be navigated."

The facts in *The William H. Bailey,* supra, are similar and the recovery was there had by the Cable Company against the ship. In the other three cases, *The Anita Berwind, The City of Richmond* and *Stephens v. Western Union Telegraph Company,* supra, the Decrees were against the Cable Companies on the merits.

(3) Temporary platform structure resting on girders sunk into the bottom of the navigable waters of the Hudson River and in use by private contractors in the removal of a rock under contract with the Government: *The Senator Rice,* 212 Fed. Rep. 960 (1914—District Court, Eastern District of New York).

(4) Injury to a person on a pontoon fastened to the shore by a cable and used as a landing in connection with a ferry: *The Mackinaw,* 165 Fed. Rep. 351 (1908—District Court, District of Oregon).

(5) Floating bath-house moored to the shore by poles and chains, access to it from the shore being had over a gangway of planks: *The M. R. Brazos,* 10 Ben. 435, Fed. Case No. 9898 (1879—District Court, Southern District of New York).

(6) Floating drydock moored to a wharf: *Simpson v. The Ceres,* Fed. Case No. 12,881 (1879—District Court, Eastern District of Pennsylvania).

(7) Raft of logs in tow of a tug in navigable waters: *The F. & P. M. No. 2,* 33 Fed. Rep. 511 (1888—District Court, Eastern District of Wisconsin). On page 515 of this case which was cited with apparent approval by Mr. Justice Holmes in *The Blackheath,* the court quotes and follows Judge Love's statement of the law in *The Arkansas* (supra p. 18) to the effect that:

> ". . . Where a structure lawfully created in the navigable channel of a river is injured by a collision caused by the negligent management of a vessel, the owner of such structure may proceed in an admiralty court, by an action *in personam* against the owners of the vessel, or *in rem* against the vessel."

(8) Fish nets extending out from the shore into navigable waters of Albemarle Sound: *The Armorica,* 189 Fed. Rep. 503 (1911—District Court, Eastern District of North Carolina).

(9) Steel blooms thrown into navigable water through the breaking down of a defective wharf: *The City of Lincoln,* 25 Fed. Rep. 835 (1885—District Court, Southern District of New York). But this case is possibly in conflict with the decision of this Court in *Martin v. West,* 222 U. S. 191.

(10) Salvage by a tug in extinguishing a fire on a steamship in drydock undergoing repairs: *The Steamship Jefferson,* 215 U. S. 130 (1909).

(11) Hire of a dredge while engaged in a partly land transaction in dredging material from a navigable stream for the purpose of piping it onto the land in aid of a land project: *Bowers v. Federal Contracting Company,* 148 Fed. Rep. 290 (1906—District Court, Southern District of New York).

(12) Repairs to an intrastate canal boat in drydock: *The Robert W. Parsons,* 191 U. S. 17 (1903).

(13) Injury to a floating elevator which was anchored to and moved up and down upon wooden spuds imbedded in the mud under navigable waters, where she was engaged in transferring grain from a schooner to canal boats: *The Frank R. Gibson,* 87 Fed. Rep. 364 (1908—District Court, Northern District of New York).

B. Courts of Admiralty have declined to take jurisdiction of injuries to the following classes of objects upon the ground that they were land structures.

(1) Warehouse on wharf, houses on shore and contents of warehouse on shore: *The Plymouth,* 3 Wall. 20 (1865—storehouse on wharf damaged by fire communicated from a ship); *Ex Parte Phenix Insurance Company,* 118 U. S. 610 (1886—houses on shore damaged by fire started by sparks from smokestack of passing steamboat); *Johnson v. Elevator Company,* 119 U. S. 388 (1886—grain in warehouse on shore lost into river through opening in wall of warehouse made by jib boom of schooner).

(2) Injuries to a pier, wharf or dock, and to persons or property thereon: *Cleveland Terminal Railroad Company v. Cleveland Steamship Company,* 208 U. S. 316 (1908); *The Mary Stewart,* 10 Fed. Rep. 137 (1881); *The Mary Garrett,* 63 Fed. Rep. 1009 (1894), *The Albion,* 123 Fed. Rep. 189 (1903); *Homer Ramsdell Transp. Co. v. Compagnia Generale Transp. Co.,* 63 Fed. Rep. 845 (1894); *The Curtin,* 152 Fed. Rep. 588 (1907); *The Harby,* 94 Fed. Rep. 1016 (1899); *The Ottowa,* Brown Adm. 356, Fed. Case No. 10,616 (1872).

(3) Injuries to bridges which immediately concern commerce upon land: *The Troy,* 208 U. S. 321 (1908); *The Rock Island Bridge,* 6 Wall. 213 (1867); *City of Milwaukee v. Curtis,* 37 Fed. Rep. 705 (1889); *The John C. Sweeney,* 55 Fed. Rep. 540 (1893); *The Neil Cochran,* Brown Adm. 162, Fed. Case No. 7996 (1872).

(4) A marine railway the upper end of which was on shore and securely and permanently fastened to the shore, but the ways of which ran down into navigable water merely however "to facilitate the transfer of vessels from the water to the shore," the structure be-

ing likened by the Court to a wharf built out into the stream: *The Professor Morse,* 23 Fed. Rep. 803 (1885).

(5) The surface part of borings made to locate an aqueduct under the river for the municipal purpose of supplying water to a City: *The Poughkeepsie,* 162 Fed. Rep. 494 (1908—affirmed in 212 U. S. 558 in a *per curiam* opinion). The lower court held (page 496) that "the project which libellant was engaged in is not even suggestive of maritime affairs."

(6) Temporary platform resting on the bottom of a navigable river and used in drilling or boring test holes in the work of building a tunnel or bridge (which does not clearly appear) for a transit route from New York City to Brooklyn: *United Engineering Co. v. N. Y. N. H. & H. R. R.* (an unreported decision cited on page 495 of the opinion in *The Poughkeepsie,* supra).

It will be observed that in this case as well as in *The Poughkeepsie,* supra p. 28, *The Senator Rice,* supra p. 25, and *Tucker* v. *Alexandroff,* supra p. 8 the courts looked to the character which the unfinished structure was to take on when completed and gave to the injured part that character.

(7) A derrick consisting of an upright, the lower extremity of which rested on the soil of a shoal in Long Island Sound and in use in erecting a pier for a lighthouse at a place which was not in navigable water and had in fact become a part of the land before the pier construction was begun; the injury to the derrick being caused by a schooner striking in navigable water the outer end of one of the guy lines which ran from the derrick to an anchorage in the soil under navigable water off the shoal or land: *The Maud Webster,* 8 Ben. 547, Fed. Case No. 9302 (1876). The derrick was evidently a land structure capable of operating only on land. The structure it was used in erecting was a pier, and, as stated in *The M. R. Brazos,* 10 Ben. 435, Fed.

Case 9898, (supra, p. 25), and other cases construing *The Maud Webster*, the place where the derrick which was injured stood had become a part of the land long before the pier construction was undertaken. In a word, the derrick was on land in use in building a land structure, to wit, a pier.

(8) Goods lost in navigable waters through being thrown from a wharf as a result of the collision by a vessel with the wharf: *The Haxby*, 95 Fed. Rep. 170 (1899).

The Plymouth and all the other cases cited in the eight classes just enumerated are merely, in the language of Judge Chatfield in *Postal Telegraph Co. v. Ross*, 221 Fed. Rep. 105 (supra, p. 24), at page 107:

> "authority for the proposition that injury by a vessel . . . to a *structure upon land, or connected with the land in such a way that the actual accident does not occur within the physical limits of the admiralty jurisdiction,* gives no right of action in the admiralty."

C.—The following additional cases contain instructive discussions of the rule that locality is the test of jurisdiction in tort, and, we believe, complete the list of authoritative decisions on the subject:

The Belfast, 7 Wall. 624, 637,
Manro v. Almeida, 10 Wheat. 473,
Waring v. Clarke, 5 How. 441, 459,
The Lexington, 6 How. 344, 394,
Ex Parte Easton, 95 U. S. 68, 72,
Leather v. Blessing, 105 U. S. 626, 630,
Panama Railroad v. Napier Shipping Co., 166 U. S. 280, 285,
Martin v. West, 222 U. S. 191,
Atlantic Transport Co. v. Imbrovek, 234 U. S. 52,
Atlee v. Packet Company, 21 Wall. 389,

The Strabo, 90 Fed. Rep. 110,
Lerman v. Port Blakely Mill Co., 69 Fed. Rep. 646,
The H. S. Pickands, 42 Fed. Rep 239,
Etheridge v. City of Philadelphia, 26 Fed. Rep. 43,
The C. Accame, 20 Fed. Rep. 642,
Leonard v. Decker, 22 Fed. Rep. 741,
The "Florence," 2 Flip. 56, Fed. Case No. 4880,
Steel v. Thacher, 1 Ware 85, Fed. Case No. 13,348.

5. *Application of above stated principles to the case at Bar.*

Appellant's structure was an almost entirely completed beacon. Its location when injured fulfills all the tests of admiralty jurisdiction in matters of tort, it being a structure lawfully erected in navigable water 27 feet deep at mean low tide, three-quarters of a mile from the nearest shore, and surrounded on all sides by navigable water. Both the *locus* of the damage and the *locus* of the origin and consummation of the tort were in navigable waters. A deep draught Trans-Atlantic steamship, at all times afloat, and (to quote from *The Blackheath*) "by a continuous act, beginning and consummated upon navigable water," crushes the structure, drives it under the water, and, proceeding over the structure, tears it loose from its foundation which is (again quoting *The Blackheath*) "upon a point which is only technically land through a connection at the bottom of the sea," and so scatters its parts beneath the water that they are irretrievably lost and destroyed in navigable water. With the test of *locality* thus satisfied, the *character* of the structure is inquired into solely to ascertain whether although in navigable water it has in fact become land either through connection with the shore or as immediately

concerning commerce upon land. The record answers both these inquiries in the negative. The only possible use or purpose of the structure, present or prospective, was maritime in nature and character, to wit, as a Government ship channel beacon light in aid of navigation. It has all the essential characteristics from a jurisdictional standpoint of the beacon which was the subject of *The Blackheath* decision. In the *Blackheath* we have a completed beacon arising from the water, and in the case at Bar a beacon almost entirely completed, arising twelve feet above mean high water, and so far advanced toward completion that its form and character were clearly developed. It would take a great deal of ingenious dexterity to deploy around *The Blackheath* so as to raise a tenable distinction in principle between the two cases. The effort of the learned District Judge to draw the line at completion and Government ownership and actual use, was based upon the analogy to a ship which, instead of sustaining his conclusions, supports the jurisdiction; for under the authority of *Tucker v. Alexandroff*, supra p. 8, a ship becomes such when she leaves the land and is launched into navigable waters, although then unfinished, and at the moment of launching takes on the character of vessel which she is to be when completed. She then becomes a subject of admiralty jurisdiction in all matters of tort. An unfinished beacon likewise takes on a maritime character and becomes a subject of admiralty jurisdiction in tort so soon as the work of construction in navigable waters is well under way, and certainly so soon as a sufficient portion of its constituent materials and parts leave the land and are so placed in a maritime *locality* that they become an uncompleted structure which is reasonably identifiable for what it is to be when finished. We respectfully submit that a line of distinction drawn at any other point would be in conflict with every well considered authority binding upon this Court.

IV.

A COURT OF ADMIRALTY, HAVING RIGHTFULLY TAKEN JURISDICTION OF THE DAMAGE TO APPELLANT'S PILE DRIVER AND BARGE, SHOULD RETAIN IT TO REDRESS THE ENTIRE WRONG INFLICTED BY THE SAME MARITIME TORT.

It must be conceded that the action was properly brought in the admiralty *in rem* against the steamship, and could not have been brought elsewhere, to enforce a recovery on the lien against the ship for the damages to Appellant's pile driver and scow. The injuries to Appellant's unfinished beacon and temporary platform, of which the lower court has refused to take jurisdiction, were sustained in the same continuing maritime tort which inflicted the injuries upon the pile driver and scow. The learned District Judge has recognized and pointed out in his opinion the hardship upon appellant of the decision denying jurisdiction (Rec. p. 13). The Court would have been justified in adding that, as a practical matter, it amounts to a denial of justice, in that it has the effect of relegating Appellant to a mere theoretical right of action at common law for the enforcement of which Appellant is without an adequate remedy. It was never possible to secure service upon the owners of the steamship in any common law court of competent jurisdiction in this country. The steamship was a British vessel, owned by a British corporation located in England, and having no officers or agents in this country, and therefore service upon the owners here could have been had at common law only by an attachment of their property, the steamship, under a statutory proceeding in the nature of foreign attachment. The tort of the Steamship was committed at a place far out in the river between the States of Delaware and New Jersey, but nearer the shore of the latter State. It is doubtful, to say the least, if the statutes of either State gave a right of action in foreign attach-

ment under which the vessel could have been attached for the tort in question, even assuming that the sheriff of the proper county could have found and attached the vessel while she was briefly within the territorial limits of such county on her outward voyage down the river after completing her business at Philadelphia following the collision. But whether or not this statement of the common law is correct, it is obvious that an attempt to collect at common law for the injuries to the unfinished beacon and temporary platform would have resulted necessarily in a multiplicity of suits in different courts, all arising out of the same continuous maritime tort.

The Steamship and its owners have had their day in a Court of admiralty which, by reason of its greater knowledge and experience in such matters, was much more competent to fix responsibility for a collision of this character than a court of common law would have been. The Steamship has been held solely responsible for the collision by reason of her reckless navigation for which there can be neither palliation nor excuse. Her owners therefore have recourse for escape to the highly technical plea to the jurisdiction, set forth in their answer, which, if sustained, will leave Appellant without an adequate remedy.

We therefore respectfully submit that all doubts as to the jurisdiction should be resolved in favor of Appellant; and that the District Court, having rightfully taken jurisdiction of a portion of the damage caused by the tortious act of the Steamship, should retain jurisdiction to redress the additional incidental damage flowing from said tort. This position would be entirely consistent with the various opinions of this Court which demonstrate a well defined purpose to construe liberally the terms "all cases of admiralty and maritime jurisdiction", and to ascertain its boundary "by a reasonable and just construction of the words used in the Constitution taken in connection with the whole instrument and the purposes for which admiralty and maritime jurisdiction were granted to the

Federal Government." (*The Steamer "Lawrence"*, 1 Black, 522, 527.)

In *Insurance Company v. Dunham*, 11 Wall. 1, 22, Mr. Justice Bradley, delivering the opinion, reviewed the history of the holdings of this Court touching the jurisdiction and showed how the jurisdiction has been extended to meet the enlarged requirements necessitated by the progress of events and the growth of the country.

> (P. 23): "The Admiralty Courts were originally established in that (England) and other maritime countries of Europe for the protection of commerce and the administration of that venerable law of the sea which reaches back to sources long anterior even to those of the civil law itself; which Lord Mansfield says is not the law of any particular country but the general law of nations; and which is founded on the broadest principles of equity and justice, deriving, however, much of its completeness and symmetry, as well as its modes of proceeding, from the civil law, and embracing, altogether, a system of regulations embodied and matured by the combined efforts of the most enlightened commercial nations of the world. . . .
>
> (P. 24): "This court has frequently declared and decided that the admiralty and maritime jurisdiction of the United States is not limited either by the restraining statutes or the judicial prohibitions of England, but is to be interpreted by a more enlarged view of its essential nature and objects, and with reference to analogous jurisdictions in other countries constituting the maritime commercial world, as well as that of England."

It is a clearly defined principle of Equity that once the Court has acquired jurisdiction for any purpose it will retain it for all purposes and proceed to a final adjudication of all matters at issue, even though in so doing it may pass on questions over which, if

they stood by themselves, the court would have no jurisdiction. It will not relegate the parties to their remedies at law under such circumstances but will always exercise its power to grant complete relief, thus avoiding a multiplicity of suits, unnecessary expense and delay. It is true that an admiralty court is not, strictly speaking, a court of Equity. It lacks certain powers which are regarded as exclusively equitable. For example, it cannot foreclose a mortgage or grant specific performance. Its doctrines are fundamentally equitable, however, and it does administer justice on equitable principles. Mr. Benedict in his work on Admiralty, 3rd Edition, says in Section 329:

> "In the exercise of its appropriate jurisdiction, the Court of Admiralty exercises equitable, as well as legal jurisdiction. If the subject be of a maritime nature, and so within the power of the court, and be of such a nature that the relief must be in the nature of equitable relief, the court is entirely competent to give the equitable, as well as the legal relief. It has the capacity of a court of law, and, in certain respects, the capacity of a court of equity. . . . And the Court of Admiralty is not a court of general equity, nor has it the characteristic powers of a court of equity, but it is bound by its nature and constitution, to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. It cannot, in a technical sense, be called a court of equity. It is rather a court of '*justice*' ".

And again in Section 358:

> "Equity and Justice are the Foundation. The Admiralty Court, as before stated, is bound to determine the cases submitted to its cognizance, upon equitable principles and according to the rules of natural justice. This principle of the maritime law pervades also the whole practice of

the admiralty in the United States. The grand object of doing justice between the parties is superior to technical rules and forms, . . . "

And in Section 17, he says:

"Power and Duty of a Court—Whenever a court has jurisdiction of a controversy, whether it depend on place, party or subject-matter, it has the power, according to its own course of procedure, to administer justice between the parties, so far as that controversy extends. If it be a court, and have jurisdiction, then from the very force of these terms, it has the power to enable it fully to adjudicate between the parties, and to enforce its decree. If it have power over the principal matter, it has it also over the incidents. If it have power to begin, it has power to finish, *although in its course it may be called upon to consider and decide matters, which, as original causes of action, would not be within its cognizance.*

Chancellor Kent says in 1 Kent Commentaries (14 Ed.) at p. 379:

"If the Admiralty has cognizance of the principal thing, it has also of the incident, though that incident would not, of itself, and if it stood for a principal thing, be within the admiralty jurisdiction. Upon this principle it is that goods taken by pirates, and sold on land, may be recovered from the vendee, by suit in the admiralty."

In *Toledo Steamship Company v. Zenith Transp. Co.* 184 Fed. Rep. 391, The Circuit Court of Appeals for the Sixth Circuit in refusing to allow a party to repudiate an agreement to arbitrate, says at page 399:

"But this suit is in admiralty, a branch of the law not hampered by the rigid rules of the common law and which deals with causes upon considerations even more elastic than pertain to the broad jurisdiction of Courts of Chancery."

The Court then cites *The Juliana*, 2 Dods. Ad. 503, 521, where it is said:

> "A court of law works its way to short issues, and confines its views to them. A court of equity takes a more comprehensive view, and looks to every connected circumstance that ought to influence its determination upon the real justice of the case. This court certainly does not claim the character of a court of general equity, but it is bound, by its commission and constitution, to determine the cases submitted to its cognizance upon equitable principles, and according to the rules of natural justice."

The following statement of Judge Lushington of the High Court of Admiralty in *The Harriett*, 1 W. Robinson Ad. 183, 192, is also cited:

> "If a court of equity would relieve, and a court of law could not, I consider that it would be my duty to afford that relief under the circumstances of the present case. The jurisdiction which I exercise is an equitable as well as a legal jurisdiction, and I must relieve the parties in this suit, if they are entitled to be relieved in law or in equity. It is therefore unnecessary for me to enter into a distinction whether the relief is at law or in equity."

The following statement of Mr. Justice Story in *The Virgin*, 8 Pet. 537, 549, is also cited in connection with the considerations which control Courts sitting in Admiralty:

> "Such courts in the exercise of their jurisdiction are not governed by the strict rules of the common law, but act upon enlarged principles of equity."

In *American Insurance Company v. Johnson*, 1 Blatch. & H. 9, 1 Fed. Case No. 303, Judge Betts says:

> "When the jurisdiction of a court of admiralty has attached, it is not divested by means

of acts subsequently done on land and cognizable by law tribunals. Jurisdiction in Admiralty once acquired cannot be thus ousted. The after acts, when incidents of the first, are, in respect to jurisdiction, all regarded as one.

"In this case, the cause of action is the taking and holding possession of the goods by the respondent, in the character and with the authority of salvor, to which all that subsequently transpired was incident. Over that principal act the court has undoubted jurisdiction, and it also has cognizance of every accessory act done on land, although not of itself sufficient to confer jurisdiction. 1 Kent Comm. 379; Lea v. Broom, 12 Mod. 135; Dean v. Angus, (Cas. No. 3,702)".

Dean v. Angus, Bee 369; Fed. Case No. 3702, was an action to recover damages from a captain by his employers for a wrongful taking of a ship as a prize, in consequence of which the libellant's ship was libelled and made to respond in damages to the owners of the captured vessel. A plea to the jurisdiction was entered on the ground that the damages occurred on land. The Court said:

"Three acknowledged principles of law naturally present themselves, for the solution of the present question, viz: 1st. Where the original cause of action is exclusively of admiralty or exclusively of common law jurisdiction, all incidental matters, and all matters necessarily flowing from, or dependent upon, that first cause of action, shall follow the original jurisdiction, whatever the complexion of those matters, separately considered, may be." . . .

"Since then I cannot but consider the case of Silas Talbot (the owner of the captured ship) as properly belonging to the prize court of admiralty, and that the present suit originates from, and is a supplementary part of, that transaction; I cannot (according to the first principle stated) but overrule the present plea to the jurisdiction of this court.

"I conclude with this observation, that in all pleas of this kind, where the law is doubtful, the leaning of the court will be in favor of its own jurisdiction. Not from a desire of extending the admiralty cognizance, but for this important consideration, that if the decision in favour of the jurisdiction should be erroneous, the doors of the common law are open for redress, and a prohibition may be obtained; but there is no remedy for the erroneous exclusion of parties who apply for the process of the admiralty, the benefit of the laws by which it is governed, and the summary justice it affords."

Instructive discussions or application of the general principles above stated will be found also in the following cases:

The "J. E. Rumble", 148 U. S. 1, 15,
Andrews v. Wall, 3 How. 568, 573,
The "Lottawanna", 20 Wall. 201, 223; 21 Wall. 558, 582, 583,
The "Hamilton", 207 U. S. 398, 406,
The "Mary Ford", 3 Dall. 188,
Waring v Clarke, 5 How. 441,
Erie R. R. v. Erie Transp. Co., 204 U. S. 220,
United States v. Cornell Steamboat Co., 202 U. S. 184,
The "Genessee Chief", 12 How. 443,
The "Angelique", 19 How. 239,
The "John E. Mulford", 18 Fed. Rep. 455, 459,
The "Mariska", 107 Fed. Rep. 989,
Leland v. Medora, 2 Woodb. & M. 92, Fed. Case No. 8237.

Also Rule 43 in Admiralty.

The most familiar application of the principle found in the above decisions and others, is to cases of funds in the Registries of the Courts realized from sales

of vessels to satisfy maritime liens, where, after satisfaction of such liens, the courts as inherent incidents of the jurisdiction already taken, consider and allow claims against the remainder of the funds notwithstanding this involves the determination of claims which, in themselves, are not cognizable in admiralty. Jurisdiction has thus been taken incidentally of such common law subjects, or land transactions, as (1) mortgages on ships; (2) claims for damages for the sale on land of goods taken by salvors; (3) claims of joint captors entitled to share in prize proceeds; (4) claims of customs officers for their distributive share of property sold; (5) petition against balance of salvage proceeds based upon an agreement of consortship between salvors; (6) action for an account of the receipts of a vessel's earnings against a former managing owner, and many other claims of like nature. These examples are exclusive of the cases of limitation of liability proceedings in which the Acts of Congress confer exclusive jurisdiction of such incidental claims upon the Court of Admiralty having custody of the fund. (The "San Pedro", 223 U. S. 365.)

V.

CONCLUSION.

To remit Appellant to its remedy at law would be certain to result in a multiplicity of suits, delay, and unnecessary expense, and in this instance, would amount also to a practical denial of justice. There is nothing in the opinions of this Court which adjudge this cause without "admiralty and maritime jurisdiction", and jurisdiction can be taken by a court of admiralty "without transcending the limits of the constitution or encountering any authority binding upon this court".

With all the parties before the Court, with all the equities demanding a settlement of the whole controversy in one proceeding, and with every reason and principle of natural justice in favor of upholding the jurisdiction, we respectfully ask: That Appellant's Assignments of Error be sustained, and the Decree of the District Court dismissing the portion of Appellant's Libel as specified, be reversed, with an order directing the entry of a Final Decree in favor of Appellant and against the Steamship "Raithmoor", its claimant and sureties, for the amount of provable damages to Appellant's unfinished beacon and temporary platform, together with interest and taxable costs.

H. Alan Dawson,
Edward J. Mingey,
J. Rodman Paul,
Biddle, Paul & Jayne,
Proctors for Appellant.

NO. 24 OCTOBER TERM, 1915

IN THE

Supreme Court of the United States

LATTA & TERRY CONSTRUCTION COMPANY
Appellant

vs.

The British Steamship "RAITHMOOR" William Evans, Master and Claimant

---

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

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ARGUMENT OF APPELLEE

HENRY R. EDMUNDS
Counsel for Appellee

Supreme Court of the United States

October Term, 1915. No. 24

LATTA & TERRY CONSTRUCTION COMPANY, APPELLANT

vs.

THE BRITISH STEAMSHIP "RAITHMOOR," WILLIAM EVANS, MASTER AND CLAIMANT

ARGUMENT FOR APPELLEE

I

The first, second, third, fourth, fifth and seventh assignments of error relate to damages claimed for injury to *libellant's* unfinished beacon light structure.

It is not alleged in the libel that the beacon light structure belonged to the libellants, and consequently there is no proof thereof, for such proof would not have been admissible under the pleading. In the fourth paragraph, about the middle, and in the fifth, the beacon light structure is alluded to as being the property of the libellant, but there is no express averment to that effect.

But, even if the libel had contained such an averment, it is manifest that it could not be proved; for everything that the libellant built in doing his work was attached to the land upon which it was placed. This land was not, and could not be, his property. The structure was fixed and permanent, and intended to be so. It bore the same relation to the bed of the river as a house does to the soil, and, whenever a single stone or timber was placed in the position where it was to remain, it ceased to belong to the contrac-

tor. Suppose an injury is done to an unfinished house, and the builder—not the owner of the land—seeks a remedy; where is it to be found? If he proceeded in trespass, and declared for an injury to *his* unfinished building, he would inevitably be non-suited, for he could produce no evidence to sustain such an averment. The appropriate form of action would be trespass on the case to recover consequential damages.

We are not without authority on the subject of ownership, which we will cite, though none seems to be needed. In *The Blackheath*, 195 U. S. 361, this Court said, on page 364, "The beacon stood fifteen or twenty feet from the "channel of Mobile River or bay, in water twelve or fifteen "feet deep, and was built on piles driven firmly into the bot- "tom. There is no question that it was attached to the "realty and that it was a part of it, by the ordinary criteria "of the common law."

Therefore it does not appear that the libellant owned any "unfinished beacon light structure," and consequently, so far as it was concerned, no injury could be inflicted upon him by any of the alleged acts or negligence of the ship.

The assignments mentioned, being based upon a fact not admitted or appearing in the record or the evidence, must be dismissed.

II

The seventh and eighth assignments of error complain that the Court below "erred in entering the final decree "dated September 15, 1911, dismissing the libel," etc. But there is no assignment in which the decree appears. Those mentioned above contain nothing except what appellant's counsel conceives to be the substance or the effect of *a* decree entered on a certain date. This is altogether irrelevant, for, even if they were sustained, the action of the Court below would be entirely unaffected. As there is no assignment to the decree which actually was entered, that decree is not before this Court for review, and therefore cannot

be reversed. We subjoin the following authorities on this point.

"This appeal might very well be dismissed on the "ground that the decree of distribution has not been as- "signed for error. This was a final decree, and when the "exceptions were overruled, the decree remained as the final "act of the Court in the distribution of the estate."

Fulmer's Estate, 243 Penna. 226.

"The sixth assignment is merely that 'the learned "'Court erred in finding against the plaintiff and dismiss- "'ing the bill of complaint.' As stated above the record "does not show the entry of any decree dismissing the bill" (near the foot of page 399).

Brown vs. Hughes, 244 Penna. 397.

"We have had occasion to say in several recent cases that an assignment is not sufficient which simply avers in the language of counsel that the trial court erred in respect to the matter about which complaint is made. The assignments must set out in the exact language of the Court, the judgment, decree, order, instruction, or other matters alleged to be erroneous in the trial of the case or the disposition made of it" (near the foot of page 283).

Ridgway vs. Phila. & Reading Rw. Co., 244 Penna. 282.

Mere general complaints that judgment was rendered for the wrong party are not such assignments as the rule requires, and present no question which the Court can recognize (on page 264).

Deering Harvester Co. vs. Kelly, 103 Fed. Rep. 261.

Argument

An assignment simply that the Court erred in entering judgment for the plaintiffs is insufficient to raise any question for review (on page 409).

Phila. Casualty Co. vs. Fechheimer, 220 Fed. Rep. 401.

III

The remaining assignments of error complain merely of the failure of the Court below to find in the libellant's favor, and therefore raise practically the same question as the others. The decision of that Court as to its jurisdiction is not, as we conceive, brought up by the record; but we will present such arguments as we think applicable thereto, in the confident expectation that they will fully convince this Court that the proceedings and findings of the District Court are wholly free from error.

Let us begin, however, with a consideration of the argument first presented by the appellant.

The appellant's criticism of the anology referred to *arguendo* by the learned Judge of the District Court between an unfinished ship and an unfinished beacon is not sound. No attempt was made by the District Judge to apply the same rules to contracts as to torts. He merely cited the example of an unfinished ship to show that the purpose for which a thing is *intended* does not fix its character, as far as admiralty jurisdiction is concerned. Viewed in this light, the illustration is highly convincing.

The cases upon this point are numerous; and, as the appellant is obliged to rely, in a great degree, upon the intended use of the damaged structure, we will mention a few which will serve to show how clearly and universally the rule is applied. The cases include, among others, the building of a vessel: *People's Ferry Co. vs. Beers,* 20 Howard 393; *Roach vs. Chapman,* 22 Howard 129; *The John B. Ketcham, 2d,* 97 Fed. Rep. 872. Machinery to be placed in a new ship: *The Paradox,* 61 Fed. Rep. 860. A contract

for furnishing materials for building a ship: *Edwards vs. Elliott,* 21 Wallace, 532. Labor in building a ship: *The William Windom,* 73 Fed. Rep. 496.

The case of the building of a lightship would seem to furnish an exact analogy to the case at bar. Her purpose is the same as that of a beacon, and, when she is actually in use as an aid to navigation, the jurisdiction of admiralty is undoubted; during her construction, it is equally clear that the claimant must proceed in another forum.

The argument which the appellant draws from *Tucker vs. Alexandroff,* 183 U. S. 424, in no wise impairs the value of Judge McPherson's comparison. It will be easily perceived from the comprehensive recital of that case which the appellant has prepared that the question before the Court was the proper construction of the treaty between the United States and Russia. This is not only apparent from the facts of the case, but is shown beyond the possibility of doubt by the language of the Court, on page 439: "Inasmuch as the Variag had been launched * * * we think she was a ship *within the meaning of the treaty*"; and on the same page, "We are also of opinion that she was a Russian ship of war *within the meaning of the treaty.*" It is thus evident that the Court was not, in *Tucker vs. Alexandroff,* laying down any rule for the decision of admiralty cases of any kind, and that it had no intention that the underlying principles therein stated should "apply with equal force to an unfinished beacon in all matters arising out of tort."

Passing on to a consideration of the law relating to such buildings as that upon which the libellant was working, we will cite two cases at some length for the purpose of showing the view which two of our ablest judges—one of them afterward a member of this Court—have taken of questions analogous to that which is now presented for determination.

Argument

The libellant had a contract with the United States for building a pier upon which a light-house was to be erected on the shore of Long Island Sound, and had at that place a derrick and other equipment necessary for the prosecution of the work. The libel alleged that the schooner *Maud Webster* negligently ran into and damaged this property. "The evidence was that, whatever there was belonging to the libellant, which was damaged by the schooner, was not afloat, and did not rest upon any floating support, or upon any boat or raft which had at any time floated, and was not anchored there, in the sense in which a vessel or buoy is anchored to the soil below, so as to float on or in the water above, but was sustained against the force of gravity wholly by direct pressure upon the soil of the earth."

The Court, per BLATCHFORD, *J.*, said, near the foot of page 555, "I cannot regard the injury to the libellant's property as having occurred on the water, in the sense of the decisions above cited, although, in one sense, it occurred in the water, because it occurred at a place in the midst of, or surrounded by, the waters. *The property was not in use for the purposes of navigation*, and was none of it afloat, and was all of it supported by direct pressure on the soil of the earth. It was no more upon the water, and the injury to it did not any more happen on the water, than did the injury to the wharf in the cases of *The Plymouth* [3 Wallace 20] and *The Ottawa* [1 Brown's Adm. Rep. 356] or the injury to the bridge in the case of *The Neil Cochran* [1 Brown's Adm. Rep. 162]."

The Maud Webster, 8 Benedict, 547.

The libel was filed by the owners of a marine railway against the steamship *Professor Morse*, to recover damages sustained in a collision. The question was simply one of jurisdiction. The Court, after a detailed statement of the facts relating to the construction and character of the rail-

way, said, near the foot of page 806, "From this description of the structure it can hardly be doubted that it was not, in any proper sense, a craft or vessel intended to float on the water. The upper end was securely fastened to the land—as much so as a wharf built out into the stream—and its character is not changed because the ways ran down below the ebb and flow of the tide, to facilitate the transfer of vessels from the water to the shore." The learned Judge then cites *The Maud Webster*, 8 Benedict 547.

The libel was dismissed.

The Professor Morse, 23 Fed. Rep. 803.

These cases show the reasoning by which the Courts have concluded that an injury to a structure affixed to the land and wholly or partially supported by it, is not capable of being redressed in admiralty. We subjoin some others, mentioning merely the kind of property damaged, so as to avoid unnecessary prolixity.

A pier, because it is a part of the land.

The Haxby, 94 Fed. Rep. 1016.

Property on a pier, because it is on land.

The Haxby, 95 Fed. Rep. 170.

Houses on a wharf, destroyed by a fire originating on a vessel lying thereby.

The Plymouth, 3 Wallace 20.

A bridge *with a draw*, because it is a part of the land:

The John C. Sweeney, 55 Fed. Rep. 540.
Martin vs. West, 222 U. S. 191.

A building on land, struck by the jib-boom of a moving vessel.

Johnson vs. Chicago, etc., Elev. Co., 119 U. S. 388.

A swinging bridge, because it is a part of the land.

Milwaukee vs. The Curtis, 37 Fed. Rep. 705.

An examination of these cases will leave no doubt as to the *general* principle that admiralty takes no cognizance of any injury caused by a vessel to property which is a part of the land, or attached thereto, or situated thereupon; or of any matters relating to property not devoted to maritime uses, though intended to be so, and unfitted for any other. The unfinished beacon structure upon which the libellants in this case were working falls within both classes.

If the structure belonged to the libellant, as he assumes in his assignments of error—though we contend that it did not—he has no more standing in admiralty than if he had been engaged in building a pier, for example, on his own property. If the structure belonged to some one else, he has no ground of complaint, either in admiralty or any other jurisdiction, for an injury to it. The contractor has a right of action, if the vessel is in fault, only for such injury as has been inflicted upon him by reason of his inability to perform his work as he has stipulated. His remedy would therefore be in a court of common law, in an action on the case to recover consequential damages.

This Court has decided, however, in *The Blackheath*, 195 U. S. 361, that, if a beacon, completed and in actual use, though built upon and fastened to the bottom of the sea, or other body of water where it is situated, suffers an injury by the negligence of a vessel, the jurisdiction exists.

It is to be observed, however, that the libel was filed by the owner, that is, by the United States, as is inferable from the fact that the Attorney-General appeared in the

case; wherefore it is no authority in favor of a contractor who has no interest in the property, being merely engaged in working upon it.

When *The Blackheath* is read with reference to its facts, and with a careful regard to the reasoning running through the opinion of the Court, it is not difficult to discover exactly what was decided.

The controlling element in the case is clearly the fact that the beacon was a *Government aid to navigation.* Let us look at the language of Mr. Justice HOLMES as he proceeds with his line of argument. Having stated the facts, he mentions that the beacon "was attached to the realty, and that it was a part of it by the ordinary *criteria* of the common law. On this ground the District Court declined jurisdiction and dismissed the libel."

Then, citing some cases in which jurisdiction was denied because the injury happened on land, he proceeds to say (near top of page 365) that, even if Congress has no authority to give the admiralty as broad a jurisdiction as it has in England or France, it ought, at least, to authorize redress "for damage by a ship, *in a case like this, to instruments and aids of navigation, prepared and owned by the Government.*"

Here is a definite expression of the principle upon which the learned Judge is proceeding, and below, on the same page, he goes on to say that it would be "more arbitrary than rational to treat attachment to the soil as a peremptory bar, outweighing the considerations that the injured thing was an *instrument of navigation.*"

These citations show that the Court had in mind (1) the general principle that, if an injury is committed on shore, there is no jurisdiction, and (2) the question whether a beacon, although a part of the realty, is, if placed in navigable water, and is *an actual aid to navigation and is owned by the Government,* constitutes an exception to the rule.

Then follows logically the inquiry (p. 365) as to th admiral's authority over matters connected with navigatio beginning with the earliest books on the subject that hav come down to us, and among the subjects mentioned ar nuisances and "beacons, sea marks, and signs for the sea

This shows that the controlling thought in the min of the Court was that the injury was to a beacon, as bein something peculiarly subject to the cognizance of the ad miral and so the conclusion is reached (on page 367) tha "to maintain jurisdiction in this case is no innovation eve upon the old English law." This sentence is important rebutting the view, frequently taken, that the *Blackheath* introduced a new doctrine on overruled former cases.

The argument that the motion of the vessel fixed he liability is then noticed (on page 366). This seems to hav obtained some footing in the early law, but is treated b Braxton, who wrote under Henry III, as an extravagance In our own cases there are innumerable instances where i is wholly rejected. In fact, the invariable rule is that th injury, however caused, must take place upon the wate Therefore the fact that the act complained of is due to moving vessel is of no relevancy *by itself*.

The Court concludes by summarizing the grounds o its decision, expressly declaring, first, as if by way of cau tioning the profession, that the *Blackheath* must be treate as applying only to its own facts (p. 367): "It has neve been decided that every fixture in the midst of the sea wa governed by the same rule." The Court deems unnecessar a determination of the relative weight of the different el ments of distinction between the *Plymouth* and the *Black heath*. "It is enough to say that we are now dealing with an injury to a *government aid to navigation, from ancien times subject to the admiralty*, a beacon emerging from th water," etc.

From the reasoning and conclusion of the Court in th *Blackheath* it is thus apparent that the fact quoted in th

above sentence is regarded as absolutely essential, and that, where it does not exist, the case is no authority. The appellant must, therefore, convince the Court in order that it may take jurisdiction, at the suit of anyone, that the unfinished structure in the Delaware River, which he says in his argument belonged to him, was a *Government* aid to navigation.

An unfinished structure, for whatever purpose intended, is not an aid to navigation. So far as it has anything to do with navigation, it is an obstruction and a source of danger. Neither is it subject to admiralty jurisdiction unless it is an instrumentality of the *Government*. These two elements must coexist in order to bring the case within the rule laid down by the *Blackheath*.

The appellant, however, in endeavoring to make use of that case—in fact, as he says on page 35, to show that it "clearly rules the case at bar," is obliged to place himself in a position which wholly precludes his recovery. The beacon structure, not being completed and in use, was not within the description of that which was injured by the steamer *Blackheath*; if it had been so, he could have no right of action. Again, he repeatedly—three times on page 35 alone—claims the structure as his own, though this position is not directly taken in the libel, nor is it found by the certificate. If the structure *did* belong to him it was not a *Government* aid to navigation; if it *did not* belong to him he can claim nothing for an injury to it. His only right of action would be in trespass on the case in the Court of Common Pleas to recover consequential damages for interference with the performance of his contract.

It is clear that these two elements of character and public ownership must both be present. A drawbridge is an aid to navigation. It has no other purpose. It is a disadvantage to the bridge itself. It breaks and injures the connection between the two *termini* and necessitates extreme care in keeping it in order, as well as caution on part of travelers. It is never employed except where vessels have

a right to pass. It is thus an aid to navigation just as truly as a beacon is, though in a different way. Yet an injury to it is not cognizable in admiralty. The *John C. Veeder*, 33 Fed. Rep. 881; *Martin* v. *Hunt*, 111 U. S. 101. So also a swinging bridge. *Milwaukee* v. *The Curtis*, 37 Fed. Rep. 505. The reason is obvious. The drawbridge is not a necessary aid to navigation.

Since the Bowditch was reported two cases, *Union Bridge Company* v. *The United States*, 204 U. S. 364, and *The Pass*, 61 Fed. Rep. 431, have come before this Court, and it has decided that the drawing of the Pyramid is still in force, unaffected by the Bowditch.

It is thus asserted that the general principle upon which the Bowditch was decided is that, when a structure, unauthorized by either though resting upon the bottom for actually becomes a bottom, owned and claimed by the United States as much as it is cognizable in admiralty for the cases and only cases that prevailed in England in such cases. When the above conditions do not exist, the rule is that which has been laid down by the Supreme Court, as have civil and state courts in the same cases. The difference is obvious. A bridge completed and in use is the property of the Government, employed by it as a part of the general equipment of the country to facilitate foreign and international intercourse among the several States and with those of foreign countries. This is a matter of public concern, and but recently the location, construction, and management of such structures have always been under the control of the public authorities. But until such completion and use the rule does not apply. Counsel misapprehends the case of the *Pass*. An unfinished building which it was intended to use as an aid to navigation, but in which was no apparatus that it ever will be. The court says that the Government will assist it. The expenditures of the contract may not be carried out. The project may be abandoned. A beam or a quicksand may destroy all the work

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doubtedly possible to extract from the opinions of the Judges in many cases such sentences as these: "Jurisdiction * * * depends upon locality," *The Plymouth*, 3 Wallace 33, and "The jurisdiction of the admiralty does not depend upon the fact that the injury was inflicted by the vessel, but upon the locality," *Id.* 36; but there is not one Court which places its decision upon the ground of locality alone. "The true meaning of the rule of locality in cases of maritime torts," is said, in *The Plymouth*, 3 Wallace 34, at the foot of the page, to be "that the wrong and injury complained of must have been committed wholly upon the high seas or navigable waters." It is to be observed that the Court is careful not to go farther than to say that an act, in order to constitute a maritime tort, must occur in a maritime place. The rule goes no farther than this.

A tort must be committed wholly upon navigable waters, but the converse is not true. It is not the law that everything that takes place upon navigable waters is cognizable in admiralty. Such a doctrine would lead to most absurd consequences. A dispute in the card-room of a transatlantic steamer, leading to slanderous accusations, or an assault by one of the passengers upon another, would come within the jurisdiction. If a malicious or negligent act were committed by a bather in the surf at Atlantic City, causing the death of another by drowning, the widow would proceed to obtain redress by filing a libel, on the ground that the cause of action arose wholly in navigable water.

The profession would be reluctant to believe this Court is prepared to promulgate any such doctrine as is contended for by the appellant. Whenever a *dictum* such as those above quoted is found, it must always be read in connection with the facts of the case; and, so read, it will always appear, either as having a limited application, or else as an argument only—never as an authoritative announcement of an inflexible principle, excluding all others. "The precise

scope of admiralty jurisdiction," says Mr. Justice HOLMES in *The Blackheath*, 195 U. S., on page 365, "is not a matter of obvious principle;" which he never would have said, if locality alone settled the question. It is safe to say, however, that a rule may be deduced from an examination of the cases, that the jurisdiction extends only to matters of a *maritime character;* that, in cases of contract, the locality may be anywhere; and that, in cases of tort, it must be in or upon navigable water. The question whether a certain tort is maritime "must be resolved according to the *character* and locality of the injured thing," says Mr. Justice VAN DEVANTER (near the top of page 197), in *Martin vs. West*, 222 U. S. 191.

In *Atlantic Transport Co. vs. Imbrovek*, 234 U. S. 52, the injury was to a workman in the hold of a vessel, caused by the negligence of an independent contractor, the vessel itself being clear of responsibility. The place where the cause of action arose was clearly maritime, and the Court entered into a discussion (as being necessary to a decision of the case) as to whether the employment was also of that character. This it would not have done if locality were the only consideration.

In *Campbell vs. Hackfeld Co.*, 125 Fed. Rep. 696, the Court (though arriving at a different conclusion) dealt with the question in exactly the same way.

And finally, we have a clear and authoritative rejection of the rule of "locality alone" by this Court, in *Cleveland Terminal etc. R. R. Co. vs. Cleveland Steamship Co.*, 208 U. S. 316, where it says, at the end of the opinion, on page 321: "The proposition contended for is that the jurisdiction of the admiralty Court should be extended to 'any claim for damage by any ship,' according to the English statute; but we are not inclined to disturb the rule that has been settled for so many years because of some supposed convenience."

V

The temporary platform seems to require no argument or consideration whatever. It was placed around the building which was under construction solely for the purpose of aiding in the work; and, in its legal aspect was on the same footing as the tools used by the laborers. It was not maritime in its character or in its object. Not even the appellant's favorite doctrine of intention will help to save it, for it was to be removed as soon as the beacon was completed.

VI

The portion of the appellant's argument which is to be found on pages 32, 33 and 34 is merely an appeal to this Court to change the law, or to disregard it for this particular occasion, to suit his convenience. Such a request is probably made very rarely, but it is found in at least one case in the books, and is thus disposed of: "The proposition contended for is that the jurisdiction of the admiralty court should be extended * * *, but we are not inclined to disturb the rule that has been settled for so many years because of some supposed convenience." *Cleveland Terminal etc. Co. vs. Cleveland Steamship Co.*, 208 U. S. 316 (the last sentence of the opinion on page 321).

Insurance Company vs. Dunham, 11 Wallace 1, cited by the appellant on page 34, and apparently relied on by him, is the first case in which the question of admiralty jurisdiction over a policy of marine insurance came before the Supreme Court. Such contracts had been held in England to be cognizable only in the common law courts, unless they were made upon the sea, and not then, if they were under seal. The other countries of Europe treated the matter differently and gave their marine courts authority to adjudicate controversies growing out of such instruments. The fundamental question was whether the grant of jurisdiction conferred upon the Federal Courts by the Constitution was

to be limited by the rules then prevailing in England, or to be so construed as to conform to the general practice of other maritime countries. It is difficult to see how the decision on this point can, in any aspect whatever, affect the disposition of the case at bar.

The "clearly defined principle of equity that once the Court has acquired jurisdiction for any purpose it will retain it for all purposes and proceed to a final adjudication of all matters at issue, even though in so doing it may pass on questions over which, if they stood by themselves, the Court would have no jurisdiction," announced by the appellant at the foot of page 34, is not supported by any citation of authority. The sentence may perhaps be found somewhere, but if so, it is probably much qualified by the context. The rule, as we understand it, is not capable of being stated in a single sentence, in such a way as to express it accurately. As it is put by the appellant, a chancellor who had before him a bill to enjoin a nuisance would, at the same time, pass upon the plaintiff's liability upon his promissory note held by the defendant upon which suit had been brought. What the rule means is that everything that equity *incidentally* takes cognizance of is inseparably connected with the main controversy, or grows out of it. Also, it will sometimes keep jurisdiction, when circumstances have so changed, *pendente lite*, that the plaintiff might have a remedy at law that did not originally exist. But these rules apply only to cases of contract, or to trusts, or something of that nature.

The collision with the *Raithmoor* produced several results simultaneously, or nearly so, but they were not connected in such a manner as to make one the consequence of another, or to blend them so that they could not be distinguished. They were merely co-incident in point of time. "When a court of equity once obtains rightful jurisdiction of a subject, it will comprehend within its grasp and decide all incidental matters," etc. *McGowin vs. Remington*, 12 Penna. 56. It will be observed that *incidental matters* only

are within the rule, not matters that are wholly independent, though occurring at the same time and between the same parties. For example, suppose that A complained of a certain structure erected by B on a lot of ground adjoining his own as being a nuisance, and also claimed ownership of the land. A court of equity would, of course, consider A's application for an injunction against the nuisance. Would it also undertake to decide who was the owner of the property? These two questions would be wholly independent, although the act of B in producing the nuisance might be the very one that suggested the litigation as to the title.

Again, how is the Court to determine which is the original, and which the incidental, act? Was the destruction of the scow the primary act, to which the injury to the beacon structure was only incidental? Why should not the reverse be true? The appellant, in the part of his argument to which we are now replying, concedes, for the time being, that there would be no jurisdiction as to the building if the collision had affected nothing else; but he gives us no reason why we should assume that it was only an incident of the pile driver and scow.

But, in fact, the equity rule which he invokes furnishes no analogy at all. We have, in the case at bar, several and distinct claims to recover damages for injuries to several and distinct items of property, caused by a collision with each of them, by the same vessel, and occurring at the same time. A controversy of this kind is far removed from equity jurisdiction. It has never undertaken to award damages for a tort.

When it is said in the cases and text books that a court of admiralty partakes of the nature of a court of equity, the meaning of this phrase is clearly that such subjects as are within its cognizance are dealt with upon equitable principles, and therefore not necessarily according to the rules of the common law. Thus we have such remedies as are afforded by contribution, general average, and the

apportionment of responsibility in cases where there has been contributory negligence. But it has never been decided or suggested that the doctrine goes any further than this. Where jurisdiction has been taken of matters outside of admiralty territory, it has been done because they were either incidental to something of a maritime character, and inseparably connected with it, or else that the subject was something which was originally of admiralty cognizance. Of the latter, the case of goods taken from a pirate and carried upon land is an example. Every authority cited by the appellant contains one or the other of these two conditions.

The jurisdiction of the Federal Courts in admiralty cases is given by the Constitution. Not even Congress has power to add anything to it. If a subject is not within this class, the courts can take no cognizance of it, whether or not it is connected, as to time and place, with some others which they clearly have power to adjudicate. This point was expressly raised in *The St. David*, 209 Fed. Rep. 985, where the libellant apparently advanced arguments similar to those which are here presented by the appellant. The Court said, on page 987, in the last paragraph: "It has been contended that the Court, having jurisdiction of the cause against the barge and claimant, should exercise jurisdiction over the stevedoring company, whose negligence is alleged to have concurred with that of the barge and its claimant in causing the injury. This argument, while persuasive, is purely one of convenience, and cannot enlarge the Court's powers. The constitutional grant of jurisdiction to courts of admiralty embraces 'all cases of admiralty and maritime jurisdiction.' Article 3, sec. 2. But, while the Court's jurisdiction is over all such cases, in exercising such jurisdiction, it has no power or authority to include causes not within the admiralty and maritime jurisdiction, however convenient it might be."

This appeal has been in your Honors' Court about two years, during which time the learned counsel for the appel-

lant has had ample opportunity to conduct the most exhaustive researches among the reported cases, and it is reasonable to assume that he has done so. He has not produced a single authority or even a *dictum* in support of the proposition that the right to adjudicate a claim based upon a certain alleged tort carries with it the right, under any circumstances, to take jurisdiction of a certain other claim arising out of a concurrent act, which, standing alone, is not within the cognizance of the Court. It is therefore equally reasonable to conclude that no such authority exists. But, even if found, it would avail him nothing. He would be obliged to go still further—very much further—and convince the Court that, when he has shown ground for recovering damages for an injury to his scow and pile driver, he becomes, *ipso facto*, entitled to proceed in the same forum for the recovery of an additional sum of money for the destruction of some other property in which he has no ownership or interest whatever.

HENRY R. EDMUNDS
Counsel for Appellee

THE RAITHMOOR.[1]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

No. 24. Argued January 26, 1916.—Decided May 1, 1916.

In determining whether the admiralty has jurisdiction over an incompleted structure in navigable waters to be used when completed as a governmental aid to navigation, its location and purpose are controlling from the time it was begun.

The jurisdiction that admiralty has over an incompleted structure in course of construction extends to that which is a mere incident to such construction.

The admiralty has jurisdiction of a libel *in rem* against a vessel for damages caused by its colliding with an incompleted beacon in course of construction in, and surrounded by, navigable waters and which when completed is to be used solely as a governmental aid to navigation.

186 Fed. Rep. 849, reversed in part.

THE facts, which involve the jurisdiction in admiralty of the District Court of a libel *in rem* against a vessel for damages caused by its colliding with an incompleted beacon in navigable water, are stated in the opinion.

Mr. H. Alan Dawson, with whom *Mr. Edward J. Mingey* and *Mr. J. Rodman Paul* were on the brief, for appellant:

The analogy to an unfinished ship supports the jurisdiction in the case. *Ferry* v. *Bers*, 20 How. 393; *Edwards* v. *Elliott*, 21 Wall. 532, 553; *Graham* v. *Morton Transp. Co.*, 203 U. S. 577, distinguished, and see *Phila. W. W. & B.*

[1] Docket title: *Latta & Terry Construction Company* v. *British Steamship "Raithmoor," William Evans, Master and Claimant.*

R. R. v. *Towboat Co.*, 23 How. 209, 215; *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 59; *Martin* v. *West*, 222 U. S. 191.

A ship becomes such when she is launched, notwithstanding she is still unfinished. *Tucker* v. *Alexandroff*, 183 U. S. 424. This case is governed by *The Blackheath*, 193 U. S. 361, and the general principles therein announced and applied, and see *The Arkansas*, 17 Fed. Rep. 383, 387, as interpreted by *Cleveland R. R.* v. *Cleveland S. S. Co.*, 208 U. S. 316; *Ex parte Phenix Ins. Co.*, 118 U. S. 610, and *Johnson* v. *Elevator Co.*, 119 U. S. 388.

Courts of Admiralty have taken jurisdiction for damages to the following structures for the reason that they were located in navigable waters and did not concern commerce on land. A beacon. *The Blackheath*, 195 U. S. 361.

Submarine cables resting on the bottom of navigable water, notwithstanding connection of the ends with the shore. *Postal Tel. Co.* v. *Ross*, 221 Fed. Rep. 105; *The William H. Bailey*, 100 Fed. Rep. 115; *S. C.*, 111 Fed. Rep. 1006; *The Anita Berwing*, 107 Fed. Rep. 721; *The City of Richmond*, 43 Fed. Rep. 85; *S. C.*, affirmed, 59 Fed. Rep. 365; *Stephens* v. *West. Un. Tele. Co.*, 8 Ben. 502.

Temporary platform structure resting on girders sunk into the bottom of navigable waters. *The Senator Rice*, 122 Fed. Rep. 331.

Injury to a person on a pontoon fastened to the shore by a cable and used as a landing in connection with a ferry. *The Mackinaw*, 165 Fed. Rep. 351.

Floating bath-house moored to the shore by poles and chains. *The M. R. Brazos*, 10 Fed. Cas. No. 9898.

Floating drydock moored to a wharf. *Simpson* v. *The Ceres*, Fed. Cas. No. 12,881.

Raft of logs in tow of tug in navigable waters. *The F. & P. M.*, 33 Fed. Rep. 511.